

IN THE UTAH COURT OF APPEALS

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| Kira N. Meadows, |) | MEMORANDUM DECISION |
| |) | (Not For Official Publication) |
| Petitioner and Appellant, |) | |
| |) | Case No. 20080343-CA |
| v. |) | |
| |) | F I L E D |
| Gregory L. Hunt, |) | (June 26, 2008) |
| |) | |
| Respondent and Appellee. |) | 2008 UT App 251 |

Third District, Tooele Department, 074300264
The Honorable Mark S. Kouris

Attorneys: Wayne R.N. Searle, Midway, for Appellant

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Kira N. Meadows appeals from a judgment and a bifurcated decree of divorce. This matter is before the court on its own motion for summary disposition based upon lack of jurisdiction.

This court does not have jurisdiction to consider an appeal unless it is taken from a final judgment or order, see Utah R. App. P. 3(a), or qualifies for an exception to the final judgment rule. See Loffredo v. Holt, 2001 UT 97, ¶¶ 10, 15, 37 P.3d 1070. An order is final only if it disposes of the case as to all parties and "finally dispose[s] of the subject-matter of the litigation on the merits of the case." Bradbury v. Valencia, 2000 UT 50, ¶ 9, 5 P.3d 649 (internal quotation marks omitted).

The district court entered a judgment and a bifurcated decree of divorce on January 3, 2008. Meadows did not file her notice of appeal until March 4, 2008. However, Meadows also filed a motion for a new trial under rule 59 of the Utah Rules of Civil Procedure on December 19, 2007. The district court has yet to rule on such motion. Rule 4(b) of the Utah Rules of Appellate Procedure states that if a person files a motion for a new trial under rule 59 then the "time for all parties to appeal from the judgment runs from the entry of the order disposing of the motion." Utah R. App. P. 4(b)(1). Accordingly, because the motion for a new trial has yet to be resolved, there is no final

appealable order at this time.¹ When this court lacks jurisdiction, it must dismiss the appeal. See Loffredo, 2001 UT 97, ¶ 11.

The appeal is dismissed without prejudice to the filing of a timely appeal after the district court enters an order resolving Meadows's motion for a new trial.

Russell W. Bench, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge

1. Rule 4(b)(2) of the Utah Rules of Appellate Procedure states that "[a] notice of appeal filed after announcement or entry of judgment, but before entry of an order disposing of any [rule 59 motion], shall be treated as filed after entry of the order and on the day thereof." Utah R. App. P. 4(b). However, Meadows cannot take advantage of this provision because she did not file her notice of appeal within thirty days after entry of the judgment. See id. R. 4(a). Thus, this court could not have jurisdiction over the matter until such time as Meadows's motion for a new trial is resolved.